

## AGREEMENT

This Agreement is made and entered into by and between Aaron McGowan ("McGowan"), his heirs, legatees, successors, assigns, and personal representatives (hereinafter collectively referred to as "Releasor") and Minnehaha County ("the County") and its current and former affiliates, officers, elected officials, agents, employees, assigns, and insurers (hereinafter collectively referred to as "Releasees").

## **RECITALS**

The parties agree to the following:

- A. McGowan is the elected Minnehaha County State's Attorney whose term expires in 2020.
- B. Based upon the terms and conditions contained herein, McGowan wishes to resign his position effective December 6, 2019, and the County is willing to accept his resignation.

## **IT IS AGREED:**

- 1. **Effective Date:** This Agreement shall become effective upon approval by the County of a motion by its Commission to accept the resignation and to enter into the Agreement, and upon the execution by the County of the Agreement.
- 2. **Resignation Date:** McGowan resigns his position as the Minnehaha County State's Attorney, effective December 6, 2019.
- 3. **Payment & Release:** In consideration of the County paying to McGowan the sum of \$35,000.00, Releasor releases and forever discharges Releasees from any and all claims, liabilities, obligations, demands, charges, complaints, promises, sums of money, agreements, controversies, lawsuits, rights, costs, attorneys' fees, and causes of action of whatsoever nature (regardless of their origin, nature, character or basis) which (in whole or in part) arise out of or relate to any word, events, deed, agreement, contract, act, practice, policy, omission, statement, action, and/or any other matter occurring or arising on or before the date of the execution of this agreement including, without limitation, the employment relationship between the parties. Releasor further releases Releasees from any and all claims, actions, liabilities and damages of any kind, whether known or unknown at this time, both past and present, resulting from any act or omission occurring on or before the date of this agreement that arise under contract, common law, or any federal, state or local law, regulation or ordinance, save and except for any breach of any representation or warranty or covenant contained in this agreement. Releasor understands and agrees that the foregoing release includes, but is not limited to, any claims, actions, liabilities, and damages arising out of or in any way connected with Releasor's employment or separation from employment with the County and Releasees, any claims under Title VII of the Civil Rights Act of 1964, as amended, the South Dakota

Human Rights Act, the state and local laws and ordinances, the Americans with Disabilities Act and the Amendments Act (ADA, ADAAA), the Age Discrimination Employment Act (ADEA), the Older Worker Protection Act (OWBPA), Family Medical Leave Act (FMLA) and any other federal, state, or local statute, regulation or ordinance; any claims under common law alleging any tort or contract violation, including, but not limited to, claims for unpaid wages, bonuses, an accounting, stock, options, wrongful discharge, employment benefits of any kind or nature, defamation, the civil rights laws, claims for emotional distress, mental pain and suffering; any claim for past, present or future physical, emotional and economic injury and damages of any kind, including, but not limited to, pain, suffering, emotional distress, mental anguish, medical expenses, loss of income, damage to reputation and self-esteem, loss or reduction of earning capacity, and any other type of injury or damages any claims for breach of the duty of loyalty, claims for slander, defamation, misappropriation of trade secrets, tortious interference, fraud, breach of contract, breach of implied covenants, conversion; and any other claims of whatever kind which either party may now or hereafter claim to have against the other party through the date of the execution of this agreement.

The parties agree that the payment referenced above will be made in January of 2020, no later than January 16, 2020. The parties further agree that the payment is subject to regular payroll taxes, but not to retirement contributions.

4. **Additional Terms.** Releasor agrees that his duties of confidentiality as set forth in the South Dakota Rules of Professional Responsibility continue following his resignation, and agrees that as to any personnel issue within the Minnehaha County State's Attorney's office that he shall not disclose any information that would identify any specific current or former employee unless such employee has first publicly disclosed his/her identity and personnel issue. Releasor further covenants and agrees to not sue any Releasee related to any claim or conduct that has occurred prior to the Effective Date, and agrees to indemnify Releasees for any costs, including attorney's fees, and damages related thereto. Nothing in this Agreement, however, is intended to or shall prevent, impede or interfere with Releasor reporting or providing truthful testimony and information in the course of an investigation or proceeding authorized by law. This Agreement does preclude Releasor's right to receive compensation or an award related to any such investigation or proceeding.
5. **Governing Law.** This Release shall be construed and governed by South Dakota law, without regard to conflict of laws principles.
6. **Representations and Warranties.**
  - (a) Releasor hereby expressly represents and warrants as follows: that he is in full command of his physical and mental faculties and fully understands the consequences of his entering into this Release; that he is not under the influence of alcohol or any drug or other mind-altering substance; and that except for the terms of this Release he has not been offered any inducement and is not under any duress to execute this Release.

(b) Releasor acknowledges and agrees that all representations, warranties, covenants and agreements and acknowledgements made by such party as set forth in this Release shall remain in full force and effect and shall survive the execution, delivery and performance of this Release.

(c) Prior to signing this Release, the Releasor acknowledges that has read and carefully considered this Agreement, and he has had an opportunity to ask questions about it, and to discuss this Release with his attorney, advisor, counselor, consultant or other person of his choosing. Releasor acknowledges that he is signing this Release freely and voluntarily.

7. **Headings/Severability.** The section and paragraph headings in this Release are for convenience and reference only, and shall not be deemed to alter or affect the provisions thereof. In the event any one or more of the provisions contained in the agreement shall for any reason be held to be unenforceable in any respect under the law of any state or of the United States, such non-enforceability shall not affect any other provision of this agreement and this agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein.

8. **Entire Agreement.** This Release reflects the entire agreement between the parties and the terms of this Release are contractual and not mere recitals.

Date: November 27<sup>th</sup>, 2019


  
\_\_\_\_\_  
Aaron McGowan

STATE OF SOUTH DAKOTA     )  
  :SS  
COUNTY OF MINNEHAHA     )



On this 27<sup>th</sup> day of November, 2019, before me, the undersigned officers, personally appeared Aaron McGowan, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public – State of South Dakota  
My commission expires: 5/12/2023

Date: December 3, 2019

\_\_\_\_\_  
Minnehaha County

By: Jean Bender, Commission Chairperson

STATE OF SOUTH DAKOTA     )  
  :SS  
COUNTY OF MINNEHAHA     )

On this \_\_\_\_\_ day of December, 2019, before me, the undersigned officers, personally appeared Jean Bender, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public – State of South Dakota

My commission expires:\_\_\_\_\_

In light of the recent negative news articles regarding my duties as State's attorney, as well as my overall health considerations, I believe it is the in the best interest of the office as well as my family to tender my resignation as the Minnehaha County State's Attorney, effective end of business day, December 6, 2019, which allow me to focus on my faith, family and my health.

Dated this 27<sup>th</sup> day of November, 2019.



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Aaron McGowan